



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MEMORANDUM

Date: February 10, 2016

To: Robert Best, Chairman, & Members, Planning Board

From: Jillian M. Harris, AICP, Planning & Zoning Administrator

Subject: **Brett Sicklick for Prime Alternative Treatment Center (applicant) and Skyline Mall, LLC. (owner)** – Review for acceptance and consideration of Final Approval for an application for a Conditional Use Permit and waiver of full site plan review to permit a Medical Cannabis Alternative Treatment Center (Non-Cultivation). This site is located at 380 D.W. Highway in the C-2 (General Commercial) & Aquifer Conservation Districts. Tax Map 4D-3, Lot 004.

Background: The subject parcel is located at 380 DW Highway, Unit A. The parcel contains a total of approximately 1.85 acres of land and is abutted by a variety of residential, commercial, and industrial development, including Columbia Circle industrial businesses to the west, the old Shaw's plaza to the south and YMCA-owned residential land to the east. The subject property is located in the C-2 (General Commercial) and Aquifer Conservation Zoning Districts.

The subject lot is the location of the Skyline Mall. The applicant is requesting approval for a Conditional Use Permit (CUP) and a waiver of full site plan review to allow a medical cannabis Alternative Treatment Center (ATC) – Non-cultivation, as defined in the Zoning Ordinance.

As the Board is aware, the legislature approved, and the Governor signed into law, new statutes regarding the legalization of medical cannabis. In response to the new State laws, and upon learning of the interest of ATC providers in possibly locating within Merrimack, the Town amended the Zoning Ordinance in September 2015 to add definitions and establish a CUP process for ATCs within the commercial and industrial districts. The applicant was selected by the State of NH Department of Health and Human Services (DHHS) in May 2015 as the ATC "dispensary" provider for "Geographic Area 2" (comprising both Hillsborough and Merrimack Counties). The applicant has chosen to withdraw their previous approval for 105 D.W. Hwy (see attached) and to propose the facility for Unit A at the subject parcel. Staff understands that the cannabis products will be supplied to the ATC from the applicant's cultivation facility in the Town of Peterborough.

Please find attached to this memo the required Security Plan (with floor plans and narrative) which is required for the Board to grant the CUP.

There are two parts to this application, first the Conditional Use Permit to allow for the Alternative Treatment Center in the C-2 (General Commercial) District, and secondly, site plan approval for the change of use from a restaurant to the ATC.

Conditional Use Permit (*staff commentary appears in italics for each item reviewed*)

Criteria for Granting a Conditional Use Permit (Section 2.02.2(D)(3), which is the applicable section referenced by Section 2.02.4(C)):

The following criteria must be satisfied in order for the Board to grant the Conditional Use Permit:

- 1. An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone:**
 - *The parcel is located beyond 1000' of the Merrimack High School Property and is not in a pre-existing drug free school zone.*
- 2. The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited:**
 - *The proposed ATC is to be located within unit A of the Skyline Mall at 380 Daniel Webster Highway, which is a permanent structure.*
- 3. The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers:**
 - *As described on page 12 of the Security plan, the applicant will dispose of all cannabis containing waste in accordance with DHHS Administrative Rule He-C402.22. Any and all unusable cannabis will be stored in the limited access Vault until disposed. Any unsealed or tampered package of cannabis from its original production packaging that is found in the Dispensary will be immediately placed in an appropriate container, sealed and stored for report and future disposal in accordance with He-C402.22. All waste/products to be disposed of will be transported to the Cultivation facility for disposal. During actual disposal, an ATC Agent will be accompanied by a Prime ATC Security Officer who will witness the incident and follow reporting procedures as outlined in He-C402.22.*
- 4. The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department:**
 - *The applicant has provided the required materials under this criterion, which have been reviewed by the Police Department (see attached). The Police Department concerns have been addressed and according to Chief Doyle "the security plan, as presented, is sufficient."*
 - *The applicant has provided responses to concerns from the Fire Chief in regards to fire alarms and security. Staff recommends that the applicant confirm that these concerns are addressed as a condition of approval, if the Board is comfortable with this as a condition. If the Board is not comfortable with this as a condition of approval, this item should be addressed prior to a decision on the CUP.*
- 5. The use of cannabis on the premises is prohibited:**
 - *The applicant has committed to enforcing this restriction on those that purchase medical cannabis at the ATC. This is part of their operating procedures and part of the security plan.*

6. The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located:

- *The applicant has committed to enforcing this restriction on those that purchase medical cannabis at the ATC. This is part of their operating procedures and part of the security plan.*

Site Plan

Completeness

Staff recommends that the Board vote to accept the site plan application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

Waiver

The Applicant has requested a waiver of full site plan review, as the proposal does not call for any site changes. The work associated with the ATC requires renovations to the interior of the facility. The applicant has provided an updated plan for the site, but has not conducted a full boundary survey.

Recommendation

Staff recommends that the Board vote with respect to the requested waiver utilizing the criteria from RSA 647:44:

- Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or
- Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Parking

This site was approved in January 1990 for 18,005 s.f. of retail/commercial use. Required parking at the time was 5.5 spaces per 1,000 s.f., therefore requiring 99 spaces for the site. The site plan submitted with this application shows 105 parking spaces on site including 4 handicapped accessible spaces. Unit A is comprised of 1,775 s.f. according to the applicant and has 10 spaces allocated to it per the original 5.5 spaces per 1,000 s.f. parking requirement. The current parking requirement for retail stores up to 75,000 s.f. is 1 space per 250 s.f., therefore requiring 7 spaces for the proposed use in this unit.

Staff recommends that the Board grant the Conditional Use Permit and grant conditional final approval of the site plan with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans to be signed by the Applicant and Property Owner;
2. Applicant shall obtain all required State permits, provide copies of the permits to the Community Development Department and note the approvals in the notes on the plan;
3. Any waivers granted (including Section and date granted) or any changes requested by the Board shall be listed and fully described on the final plan, as applicable;

4. Applicant shall address any forthcoming comments from the Conservation Commission, Assessing Department, Wastewater Division, and Merrimack Village District, as applicable;
5. The applicant shall address comments related to fire alarms and security from the Fire Department, as applicable;
6. The applicant shall address the following staff technical comments:
 - a. The plan should indicate the unit number and total square feet and depict the unit location within the commercial building where the ATC is proposed for;
 - b. The plan should depict existing lighting on site and if any modifications are proposed by this application;
 - c. Please add the parking spaces required (7) and the parking spaces allocated (10) to the unit the ATC is proposed for to the parking note # 5 on the site plan;
 - d. Please note the water and sewer source on the plan;

Staff also recommends that the following general and subsequent conditions be placed on the approval:

1. Any proposed signage shall comply with the requirements of Section 17.10 of the Zoning Ordinance (including the requirement for all required sign permits) and shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.
2. The building on this property shall comply with all current NFPA codes for its intended use. This includes emergency lighting, fire alarm and sprinkler system additions/changes and fire extinguisher placement.
3. Building permit requirements:
 - a. Building permit application;
 - b. 11 x 17 plan for facility;
 - c. Electrical plans in compliance with NFPA 70 NEC 2014 electrical codes;
 - d. Interior plans in compliance with current adopted IBC Building and plumbing codes.

cc: File
Correspondence
John Glowick & Brett Sicklick, Prime Alternative Treatment Center; Applicants
Skyline Mall, LLC; Property Owner

ec: Ted Wright; Wright Survey, PLLC
Dan Crandlemire, Shaheen & Gordon, P.A.
Mark Doyle, Chief of Police
Michael Currier, Fire Chief
John Manuele, Fire Marshall
Kyle Fox, PE, Town Engineer/Deputy Public Works Director
Fred Kelley, Building Official
Carol Miner, Building Department